

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PA.

(4) el  
S.100

KIM SMITH  
PETITIONER

vs.

SUPT J. MORGAN  
DEPUTY SUPT. D.R. MORDER  
DEPUTY SUPT. A.C. BIVIANO  
ASSISTANT SUPT. S. BURKS  
HEALTH CARE ADM.G.WEAVER  
NURSE SUP. H. ZIMMERMAN  
PAT YARGER  
NURSE SUP. K. ALLEN  
MAJOR TENNIS  
CAPTAIN GLENNY  
BUREAU OF HEALTH CARE SERVICE  
C.C. MCVEY  
DR. LONG S.C.I.F. MEDICAL DIR.  
UNIT MANAGER CORBIN  
COUNSELOR OGERSHOK  
NURSE J. GROVE  
COMMISSIONER HORN  
DEPT. OF CORRECTION HEALTH CARE SYSTEM ET, AL  
A. Bonnermore

Abridge Gillis  
Ms. Lezell  
RN Bernece  
RN Wolfgang  
RN Ambrose  
JL Jordan  
C.O. Leark

DOCKET NUMBER - \_\_\_\_\_

APPLICATION FOR APPOINTMENT OF COUNSEL

And now comes Kim Smith a lay person not lettered in legal matters moves in this motion for appointment of counsel to represent him on a TEMPARY RESTRAINING ORDER WITH SCANTION in damages for MEDICAL NEGLENT ABUSE OF POWER, ABUSE OF POLICY, PSYCHOLOGICAL ABUSE, MENTAL ABUSE, ET 8TH AMENDMENT VIOLATION IN CONNECTION WITH HEALTH CARE, Deprivation under color of law, deliberate indifference standard to medical treatment, denial of medical treatment for a life threatening problem, and because of the intensive discovery that needs to take place, petitioner has met with rejection by institutional staff when requesting to review or for copies of medical records, the appointment of counsel will aid petitioner in the stoping the abuse he has indured for a 18 month period at the hand of this institutional staff and the health care professional of this institution, in the repeated denial of referral and repeated charging for the same medi-

ical treatment for the same problem, using the statue under( THE AUTHORITY OF THE SECRETARY OF CORRECTION TO DIRECT THE OPERATION OF THE DEPT. of corrections is established by section 201, 206, 506, and 901-B of the Adm Code of April 1929, Act of April 9, 1929, P.L. 177, No. 175 as amended. CROSS REFERENCE 1 . ADM MANUALS A. XXXXX 13.2.1 June 1995 (b) 13.2.3 Access to health care June 1995(c) 13.2.5 Access to emergency care June 1995 in connection with the DC-ADM 820 Co-Pay for medical service. Prison MEDICAL SERVICE ACT THE ACT OF MAY 16, 1996, ACT NO. 1996-40, 61 P.S.

1011, et seq. and act 53 of 1996.)(in this act it is clearly stated under VI. PROCEDURE(A) Fees (2) Sub. Sec.(G)(M)(P) as a lay person petitioner is not sure what of his rights are being violated when this statue is violated repeatedly and petitioner is subjected to fees, when the statue listed above under (2) clearly states(**THE FOLLOWING MEDICAL SERVICE WILL NOT RESULT IN A CHARGE TO THE INMATE.**) Or the failure of institutional medical staff to provide a inmate with medical treatment, that was ordered by an outside Dr. that is contracted with the state, or referral to the professionals that deal with the problem and get it treated right. For almost 5 years petitioner has been getting cream for foot fungus, and the same for in grown hair problems from shaving, and at no time were these problem considered cronic, nor was petitioner given a referral to the Dr. that deals with these problem, when requesting such ~~XXXXXX~~ petitioner was told no. by adm health care personnel here, and petitioner was subjected to substandard treatment by health care personal that training was not in these health care areas., And to subject petitioner to a fee or charge every time he goes to get these medication renewed violates this above listed statue, after giving him this medication for so long. Their maybe a medical negligence issue in this case that the appointment of counsel would aid petitioner in. ( IN JUNE 98 PETITIONER WENT TO MEDICAL FOR A BOIL, FISHER ON REAR, WAS GIVEN SIT BATHS AND ANTI-BYODIC, THE PROBLEM DIDN NOT GO AWAY, RETURN TO MEDICAL AND WAS GIVEN THE SAME, AND WAS CHARGED FOR IT, FOR 7 MONTHS PETITIONER SIT AND WATCHED THIS BOIL GROW AND NOTHING WAS DONE WITH IT, UNTIL JAN 99 WHEN IT WAS LANCED AND PETITIONER had a 3 inch inschin in his rear that was left open to drain. Had this problem been treated in July, Aug, Sept, Oct, Nov. it could not have been so large of an cut, the unwarranted delay may fall under medical negligence, which caused petitioner harm, pain and suffering.

The phone calls underDC-ADM818 in which inmates can pay for phone calls, as petitioner counselor abused this aspect and crossed the line to a point that it became invasion of privacy, between petitioner and attorney

Petitioner also needs help in expressing the below case law and statute under this act. La Fout v. Smith 834 F2d 389, 392-94 (4th Cir 1987) 8th amendment violation, Mc Carthy v. Weinberg 753 F2d 836, 839 (10th Cir 1985), Lee v. McManus, 543 F Supp 386, 391-93 (D. Kan 1982) the Act of 1990 (ADA)(a)(b)(c), Casey v. Lewis 834 F Supp at 1583 (delay) also 42 U.S.C.S 12101 et. esq., 42 U.S.C.S 12132 et esq., 42 U.S.C. S 12172 et. esq., and 29 U.S.C. S 794, and Civil Rights Act of 1962, 42 U.S.C. S 2000 (d) et. esq., exhaustion is not required.

Under the case law of Bounds v. Smith 430 U.S. 817, 821-28 (1977), as cited in Barnard v. Collins 13 F3d 871, 878-79 (5th Cir), 18 U.S.C.S 3006A ~~(a)(2)(B)~~ (1994).

Therefore for the forgoing reason counsel should be appointed in the name of justice for the abuse petitioner is enduring and suffering, to see if he has a constitutional right to adequate medical treatment when the medical condiction is life threatening. ~~xxxxxx~~  
 Ones life is at risk when each night he sleeps, he stops breathing 16 times in an hour at 16-25 seconds each time, and it is cruel for institutional staff, ( medical) staff to know of this condiction and after getting treatment approved their is a delay in the requested treatment, that has been over 90 days. In as much this problem was brought to medical staffs attention well over 2 years ago and no medical treatment was given as of this date, Feb. 10, 1999. I was told it was ordered but I'm not trusting in what medical staff has told me due to past treatment. I have a constitutional right to medical treatment when a problem is found out, in this case life threatening. Do I have a course of action in this denial of medical treatment, as a lay person I'm not sure and need the help of a legal professional to aid in the detection of this violation and abuse, and to assist in fashioning a scantion againts the listed parties.

This pro-se petitioner should be granted this motion for counsel for a number of reasons in this T.R.O. With Scantion for hams and abuse that he has to suffer, it is causing a mental problem knowing that when I sleep I may not wake, and it is having its affect on me mentally and physcially as I must endure until they see fit to treat if at all.

Also petitioner is without funds for counsel in this case.

RESPECTFULLY SUBMITTED



cc/RP/10/00

May 9, 2001

**CERTIFICATE OF SERVICE**

I certify that on or about ~~March 15, 1968~~ this document was given to officers on I block  
on the 2-10 shift to mail to the below listed parties, I certify that the forgoing is  
given in good faith and without delay, it is also ~~sworn to~~ certified under the penalty  
of perjury 28 U.S.C. § 1746

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UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PA.  
FEDERAL BUILDING  
235 N. WASHINGTON AVE.  
P.O. BOX 1148  
SCRANTON PA. 18501

SWORN TO BEFORE ME THIS \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ the forgoing petitioner in this motion for appointment of counsel for T.R.G. With Scantion.

**PETITIONER**

**NOTARY PUBLIC**

PROOF OF SERVICE

A COPY OF THIS PETITION WAS FORWARDED TO THE BELOW LISTED PARTIES BY WAY OF INSTITUTIONAL MAIL ROOM ON OR ABOUT ~~May 9, 2001~~, I certify that the forgoing is correct and true to the best of my ability.

*May 9, 2001*

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Scranton pa. 18501

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